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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11	RANDY HORN, D.D.S., etc.)	Case No. EDCV 12-1604-
12	et al.,	VAP (DTBx)
	Plaintiffs,	
13	v.	MEMORANDUM DECISION AFTER
14	HIGH POINT SERVICES,	COURT TRIAL ON EQUITABLE
15	INC., et al.,	ISSUES
16	Defendants.)	

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18 The legal claims in this case were tried to a jury on
19 December 3, 4, 5, 6, and 10, 2013. The jury returned its
20 verdict on December 12, 2013, finding in favor of
21 Plaintiffs on their claims and awarding damages, as set
22 forth in the Special Verdicts (Doc. No. 228).

23 Defendant Republic Monetary Exchange, LLC
24 ("Republic") raised the equitable issue whether
25 Plaintiffs North American Title Insurance Company ("North
26 American") and First American Title Insurance Company
27 ("First American"), who substituted into this action as
28 Plaintiffs in place and stead of their insureds, David

1 Kirton and Randy Horn respectively, were entitled to
2 subrogation. On November 26, 2013, the Court issued a
3 minute order bifurcating the equitable issue of the right
4 to subrogation, and ordering that issue be tried to the
5 Court once the jury trial on Plaintiffs' claim for
6 conversion was completed. (November 26, 2013 Minute
7 Order (Doc. No. 187).)

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9 Accordingly, the issue of the equitable right to
10 subrogation was tried to the Court on December 12, 2013,
11 and the Court took the matter under submission at the
12 conclusion of the hearings on that date. The Court
13 having considered all the evidence presented by the
14 parties, as well as the argument of counsel, rules as
15 follows.

16 17 **LEGAL STANDARD**

18 "Subrogation has its source in equity and arises by
19 operation of law. . . ." While [an] insurer by
20 subrogation steps into the shoes of the insured, that
21 substitute position is qualified by a number of equitable
22 principles." State Farm General Ins'l. Co. v. Wells Fargo
23 Bank, N.A., 143 Cal. App. 4th 1098, 1106-07 (2006)
24 (citations omitted).

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26 There are eight elements to the right of subrogation:
27 "[1] the insured suffered a loss for which the defendant
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1 is liable, either as the wrongdoer whose act or omission
2 caused the loss or because the defendant is legally
3 responsible to the insured for the loss caused by the
4 wrongdoer; [2] the claimed loss was one for which the
5 insurer was not primarily liable; [3] the insurer has
6 compensated the insured in whole or in part for the same
7 loss for which the defendant is primarily liable; [4] the
8 insurer has paid the claim of its insured to protect its
9 own interest and not as a volunteer; [5] the insured has
10 an existing, assignable cause of action against the
11 defendant which the insured could have asserted for its
12 own benefit had it not been compensated for its loss by
13 the insurer; [6] the insurer has suffered damages caused
14 by the act or omission upon which the liability of the
15 defendant depends; [7] justice requires that the loss be
16 entirely shifted from the insurer to the defendant, whose
17 equitable position is inferior to that of the insurer;
18 and [8] the insurer's damages are in a liquidated sum,
19 generally the amount paid to the insured." Interstate
20 Fire & Cas. Ins. Co. v. Cleveland Wrecking Co., 182 Cal.
21 App. 4th 23, 33-34 (2010) (quoting Fireman's Fund Ins.
22 Co. v. Maryland Cas. Co., 65 Cal. App. 4th 1279, 1292
23 (1998).)

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25 Although the California courts have identified eight
26 elements of a claim for subrogation, the parties here
27 only dispute one of these, i.e., that justice requires
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1 that the loss be entirely shifted to the defendant, whose
2 equitable position is inferior to that of the insurer -
3 sometimes referred to as the doctrine of superior
4 equities.

5 ANALYSIS

6 First American and North American, the subrogating
7 insurers, bear the burden of establishing that they have
8 superior equities in seeking recovery against Republic.
9 See State Farm, 143 Cal. App. 4th at 1111. "The aim of
10 equitable subrogation is to shift a loss for which the
11 insurer has compensated its insured to one who caused the
12 loss, or who is legally responsible for the loss caused
13 by another and whose equitable position is inferior to
14 the insurer's." Id. at 1112. In determining whether the
15 right of subrogation may be invoked against a third
16 party, the Court looks to whether the third party is
17 "guilty of some wrongful conduct which makes his equity
18 inferior" to that of the insurer's. Id. at 1111; see
19 Barclay Kitchen, Inc. v. California Bank, 208 Cal. App.
20 2d 347, 357 (1962) (Insurer had superior equities to
21 negligent third party); Hartford Acc. & Indem. Co. v. All
22 Am. Nut Co., 220 Cal. App. 2d 545, 562 (1963) (Insurer
23 had superior equities to third party that failed to
24 prevent loss despite constructive notice of facts that
25 should have put third party on notice to fraud).

1 The jury in this case determined that Republic is
2 liable for the conversion of insured Randy Horn's
3 ("Horn") personal property. (Special Verdict Form No.
4 3A.) The jury also found that Republic is liable for
5 conversion of insured David Kirton's ("Kirton") personal
6 property. (Special Verdict Form No. 3B.) In finding
7 Republic converted Horn and Kirton's property, the jury
8 determined that Republic's conduct was a substantial
9 factor in causing harm to Horn and Kirton. The jury also
10 determined that Republic had constructive notice of the
11 underlying criminal conduct that was a direct cause of
12 the harm to Horn and Kirton. (See Special Verdict Form
13 Nos. 3A and 3B.)
14

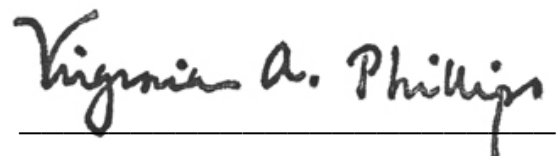
15 In balancing the equities, the Court is guided by the
16 jury's finding on causation of the harm and liability for
17 conversion. See Truck Ins. Exch. v. Cnty. of Los
18 Angeles, 95 Cal. App. 4th 13, 18, 27 (2002) (Insurer had
19 superior equities where jury had found third party
20 negligent and responsible for the insured's harm). The
21 evidence adduced at the trial on the equitable issue
22 demonstrated no failure on the part of North American or
23 First American with respect to their duties as title
24 insurance companies to their insured. Moreover, the
25 evidence adduced during the trial did not suggest the
26 title insurance companies were at fault in any way, or
27 had inferior equities. Accordingly, the Court finds that
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1 Republic's wrongful conduct renders its equity inferior
2 to that of insurers, North American and First American.
3 North American and First American have demonstrated they
4 have superior equities, and therefore have a right of
5 subrogation.

6
7 **CONCLUSION**

8 The above analysis constitutes the Court's Findings
9 of Fact and Conclusions of Law pursuant to Federal Rule
10 of Civil Procedure 52. For the foregoing reasons, the
11 Court finds North American and First American are
12 entitled to assert their equitable rights of subrogation.

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16 Dated: January 17, 2014

A handwritten signature in cursive script that reads "Virginia A. Phillips". The signature is written in dark ink and is positioned above a horizontal line.

VIRGINIA A. PHILLIPS
United States District Judge